

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**DEFENDANT AMERISURE MUTUAL INSURANCE COMPANY'S NOTICE OF
REMOVAL**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, AMERISURE MUTUAL INSURANCE COMPANY (hereinafter, "Amerisure"), one of the Defendants in the above-captioned and titled cause, and files this, its *Notice of Removal*, and shows the court the following:

I.

INTRODUCTION

1. Plaintiff is LIBERTY MUTUAL INSURANCE COMPANY (hereinafter, “Liberty Mutual”) and Defendant is AMERISURE MUTUAL INSURANCE COMPANY (hereinafter, “Amerisure”). Other Defendants are ARCH INSURANCE COMPANY, BRITISH AMERICAN INSURANCE COMPANY, STARR SURPLUS LINES INSURANCE COMPANY, XL INSURANCE AMERICA, INC., MAXUM INDEMNITY COMPANY, EVANSTON INSURANCE COMPANY, VALLEY FORGE INSURANCE COMPANY, OKLAHOMA SPECIALTY INSURANCE COMPANY, TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, TRAVELERS LLOYDS INSURANCE COMPANY, OLD REPUBLIC GENERAL INSURANCE CORPORATION, AIG SPECIALTY INSURANCE COMPANY, and UNITED FIRE & CASUALTY COMPANY.

2. On **May 4, 2017**, Plaintiff sued Defendants in the 192nd Judicial District Court of Dallas County, Texas, in Cause No. DC-17-05337 styled *Liberty Mutual Insurance Company, Plaintiff v. Arch Insurance Company, et. al., Defendants*, which case is still pending in said court. Plaintiff did not request a trial by jury in its Original Petition, but Defendant Maxum Indemnity Company requested a trial by jury in its Original Answer filed in the 192nd District Court of Dallas County, Texas.

3. Defendant Amerisure was served with Plaintiff’s suit on **May 22, 2017**. Defendant Amerisure files this, its *Notice of Removal*, within the 30-day time period required by 28 U.S.C. §1446(b).

II.**BASIS FOR REMOVAL**

4. Removal is proper because there is complete diversity between the parties. *See* 28 U.S.C. §1332(a). Plaintiff is an insurance company duly organized under the laws of the Commonwealth of Massachusetts with its principal place of business in Boston, Massachusetts. Defendant AMERISURE is an insurance company organized and existing under the laws of the state of Michigan with its principal place of business in Farmington Hills, Michigan. Based on Plaintiff's Original Petition for Declaratory Judgment and independent research conducted by counsel for Amerisure, each of the remaining Defendants are diverse from Plaintiff as not a single Defendant is organized under the laws of Massachusetts or maintains a principal place of business in Massachusetts. Due to the number of Defendants, Amerisure provides the below chart of the states of incorporation and principal places of business for each Defendant:

Defendant	State of Incorporation	Principal Place of Business
Arch Insurance Company	Missouri	Jersey City, New Jersey
British American Insurance Company	Texas	Dallas, Texas
Starr Surplus Lines Insurance Company	Illinois	Chicago, Illinois
XL Insurance America, Inc.	Delaware	Stamford, Connecticut
Maxum Indemnity Company	Delaware	Duluth, Georgia
Evanston Insurance Company	Illinois	Deerfield, Illinois
Valley Forge Insurance Company	Pennsylvania	Chicago, Illinois
Oklahoma Specialty Insurance Company	Oklahoma	Houston, Texas
Travelers Property Casualty Company of America	Connecticut	Hartford, Connecticut
Travelers Lloyds Insurance Company	Texas	Richardson, Texas
Old Republic General Insurance Corporation	Illinois	Chicago, Illinois
AIG Specialty Insurance Company	Illinois	Chicago, Illinois

United Fire & Casualty Company	Iowa	Cedar Rapids, Iowa
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5. The amount in controversy clearly exceeds \$75,000.00, excluding interest and costs, as evidenced by the Exhibits attached to Plaintiff's Original Petition for Declaratory Judgment. Specifically, Plaintiff sues the Defendants for "a declaration regarding the Defendants' duties to defend and indemnify Trinity Infrastructure, Inc. ("Trinity"), in connection with an underlying suit, Cause No. DC-15-03577, in the 134th District Court of Dallas County, Texas (the "Underlying Suit"), previously filed as two separate suits." *See* Plaintiff's Original Petition for Declaratory Judgment at paragraph 4.1. The Exhibits Plaintiff filed with its suit include the Consolidated Petition (Exhibit A to Plaintiff's Petition), the Cezares Petition (Exhibit B to Plaintiff's Petition), the Rodriguez Petition (Exhibit C to Plaintiff's Petition) and the Trinity Third-Party Petition (Exhibit D to Plaintiff's Petition). In the Consolidated Petition, "Plaintiffs seek in excess of \$1,000,000.00 in damages, punitive damages, attorneys' fees, and other relief." *See* Exhibit A to Plaintiff's Original Petition for Declaratory Judgment at paragraph 290. In the Cezares Petition, Plaintiffs state that as a group they seek monetary damages over \$1,000,000." *See* Exhibit B to Plaintiff's Original Petition for Declaratory Judgment at paragraph 88. In Trinity's Third-Party Petition, it states that it seeks to recover monetary relief in excess of \$1,000,000. *See* Exhibit D to Plaintiff's Original Petition for Declaratory Judgment at paragraph 26.

6. Thus, although Plaintiff fails to state the maximum amount of damages it seeks in its Original Petition for Declaratory Judgment, Plaintiff specifically requests a declaration that the "Defendants have a duty to defend and indemnify Trinity in connection with the Underlying Suit" as well as "[a]n award of all defense costs and fees LMIC has incurred in defending Trinity

in the Underlying Suit" and "[a]n award of the attorney's fees and costs LMIC has incurred in asserting this declaratory and subrogation action and associated prompt payment penalties." *See* Prayer for Relief in Plaintiff's Original Petition for Declaratory Judgment at page 18. As Trinity seeks to be indemnified from the Underlying Suit, where such Underlying Suit seeks in excess of \$1,000,000, the \$75,000 amount in controversy requirement to establish diversity jurisdiction is met. 28 U.S.C. §1332(a).

7. All pleadings, process, orders and other filings in the state court action will be attached to this notice as required by 28 U.S.C. §1446(a). In addition, Defendant files herewith an index of all documents filed in state court, a copy of the docket sheet in the state court action, all documents filed in the state court action, and a signed certificate of interested persons in accordance with Local Rules 81.1 and 3.1(c). Please see Exhibit "A," attached herein.

8. Venue is proper in this district under 28 U.S.C. §1441(a) because the state court action where the action has been pending is located in this district.

9. Defendant will promptly file a copy of this notice of removal with the clerk of the state court where the action has been pending.

III.

PRAYER

WHEREFORE, Defendant **AMERISURE MUTUAL INSURANCE COMPANY** asks the Court to remove the action filed in the 192nd Judicial District Court of Dallas County, Texas, in Cause No. DC-17-05337 styled *Liberty Mutual Insurance Company, Plaintiff v. Arch Insurance Company, et. al., Defendants*, to this federal court.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT,
AMERISURE MUTUAL INSURANCE
COMPANY**

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was forwarded to all counsel of record pursuant to the Federal Rules of Civil Procedure on this the 15th day of June, 2017.

s/R. Brent Cooper
R. Brent Cooper